



STATE OF WASHINGTON  
WASHINGTON STATE BOARD OF HEALTH  
1102 SE Quince Street • PO Box 47990  
Olympia, Washington 98504-7990

July 14, 2004

**TO:** Washington State Board of Health Members

**FROM:** Carl Osaki, Member

**RE: PUBLIC HEARING FOR PROPOSED REVISION OF WAC 246-217-010,  
FOOD WORKER CARD DEFINITIONS — REMOVING ADULT  
FAMILY HOMES FROM LIST OF INSTITUTIONAL OPERATIONS**

**Summary**

In response to adult family home representatives' concerns, the Washington State Department of Health is requesting that the Board consider amending WAC 246-217-010(4) to move adult family homes from the institutional category to a separate category under the definition of food service establishment. The CR-102 rule revision proposal is attached.

This proposal would not change the requirement that adult family home providers and staff have food worker cards. The food worker card requirement only applies to persons who prepare and serve food and not to persons who help residents eat.

The only formal comment received on the proposed rule revision as of July 8 is in support of the proposed revision (please see attached email from Craig Fredrickson).

**Recommended Board Motion**

Depending on testimony offered and the Board's own discussions, the Board may choose to consider, amend if necessary, and adopt the following motion:

***The Board adopts the revised WAC 246-217-010 as published in WSR 04-09-056.***

**Background**

Food worker permits were established in Washington law in 1957. Adult family homes (AFH) were defined in Washington law in 1989. Prior to 1999, Washington State Department of Health (DOH) considered adult family homes to be included in the boarding home category and subject to food worker card requirements. In 1999 the State Board of Health amended the definition of “food service establishment” in the food worker card rules, WAC 246-217-010(4), to explicitly include adult family homes in the list of institutional operations.

In October 2000 the Board received a petition from an AFH representative to repeal WAC 246-217-010. The petition argued that the AFH community was not properly included in the rulemaking process and that DOH did not follow the appropriate process. The Board discussed this issue in November 2000 and denied the petition on the finding that DOH followed appropriate protocol and the rule was properly adopted. The Board asked DOH to solicit broad input regarding the level of food safety training necessary to protect the health of adult family home residents and to report recommendations to the Board by May 2001.

Legislation passed in the 2001 session and the Governor’s veto of sections of that legislation made this request moot. During the session, the Board worked with then-Representative Carolyn Edmonds, DOH, Department of Social and Health Services (DSHS), and AFH lobbyists to negotiate language in Section 9 of Substitute House Bill 1320 and Senate Bill 5521, companion bills relating to food handling practices in adult family homes. The revised language would have exempted AFH providers, managers, and employees from needing to obtain food handler permits under WAC 246-217-010. Instead, the proposed legislation would have ensured that workers in adult family homes received food handler training (pursuant to Chapter 69.09 RCW) through the mandatory DSHS education program. The Board wrote a letter in support of this proposed legislation. In May 2001, Governor Locke vetoed this revised language, and his veto message reinforced the need for employees of adult family homes to obtain food worker cards in a timely, efficient, and effective manner.

In July 2001, Mary Selecky and I met with staff members from the Board, DOH, and DSHS to discuss food safety in adult family homes and the significance of the Governor’s veto. The group agreed that food workers in adult family homes should continue to be subject to requirements outlined in WAC 246-217-010 with no exceptions. DSHS and DOH worked together on a letter that was sent on November 1, 2001 to all AFH operators in the state reminding them of their obligation to comply with the Board’s rule related to food handler cards.

In January 2002 the Board heard from Adult Family Home Association of Washington representative Craig Fredrickson and AFH lobbyist Bill Day. They expressed concerns about the requirement under Chapter 246-217 WAC that all AFH food handlers obtain food worker cards (see attached Fredrickson letter). They also expressed concerns about language defining adult family homes as institutions. The Board chair directed staff to meet with Mr. Fredrickson and Mr. Day to discuss whether there might be ways to address their concerns within the context of the Governor’s partial veto message stressing the importance of food safety in adult family homes.

The Board last heard about this issue in October 2002. AFH, DOH, DSHS, and Governor's Office representatives, Board staff and I recommended that the Board consider limiting the applicability of Chapter 246-217 WAC to AFH providers and resident managers. It was thought that this would ensure that AFH staff members with the greatest influence on food safety receive timely food safety training. However, when talking with additional AFH providers Board staff was informed that all AFH caregivers are likely to handle food. DOH received an opinion from their Assistant Attorney General that requiring only providers and resident managers get food worker cards would therefore conflict with the food worker card statute, RCW 69.06.010:

"It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health."

For three years SBOH, DOH, DSHS, AFH and Governor's office representatives have discussed how to address AFH representatives' concerns within the current multi-agency regulatory structure, and have not agreed on any proposed policy changes.

While state agencies and the Governor's Office are in agreement that the residential and noninstitutional nature of these facilities does not warrant an exemption from the protection that the food worker card requirement offers to residents, they also agree that it may be unfair to define AFH facilities as institutions and lump them with more institutional settings in the rule. In deference to the AFH representatives' concerns about inappropriate language, DOH is now requesting that the Board consider amending WAC 246-217-010(4) to move adult family homes from the institutional category to a separate category under the definition of food service establishment.

The CR-102 rule revision proposal is attached. This proposal would not change the requirement that AFH providers and staff have food worker cards. This requirement only applies to persons who prepare and serve food and not to persons who help residents eat.

The only formal comment received by DOH staff as of July 8 on the proposed rule revision is in support of the proposed revision (please see attached email from Craig Fredrickson). Mr. Fredrickson's email also includes concerns about requiring food worker cards for adult family homes caregivers, as expressed in his January 2002 testimony and letter to the Board.

Attachments